

**Attn:**

**His Excellency, President MC Ramaphosa**  
**President of the Republic of South Africa**  
Union Buildings  
Government Avenue  
Pretoria

**By email:** [presidentrsa@presidency.gov.za](mailto:presidentrsa@presidency.gov.za)  
[president@presidency.gov.za](mailto:president@presidency.gov.za)  
[ntoeng@presidency.gov.za](mailto:ntoeng@presidency.gov.za)  
[malebo@presidency.gov.za](mailto:malebo@presidency.gov.za)

90 Rivonia Road, Sandton  
Johannesburg, 2196

PO Box 61771, Marshalltown  
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

**T** +27 11 530 5000

**F** +27 11 530 5111

[www.webberwentzel.com](http://www.webberwentzel.com)

**And To:**

**Ms B Mbete, MP**  
**Speaker of the National Assembly**  
Parliament Building,  
Parliament Street,  
Room S38, Cape Town  
**By email:** [speaker@parliament.gov.za](mailto:speaker@parliament.gov.za)

**And To:**

**Prof Hlengiwe Mkhize, MP**  
**Chairperson of the Portfolio Committee on Communications**  
**By email:** [hmkhize@parliament.gov.za](mailto:hmkhize@parliament.gov.za)

**(Page 1 of 7 including this page)**

Your reference

Our reference

Date

D Milo / N Padayachee/ Z Ranisi  
3030652

21 February 2019

Dear Honourable President, Honourable Speaker of the National Assembly, and Honourable  
Chairperson of the Portfolio Committee on Communications

**IN RE: THE SOUTH AFRICAN BROADCASTING CORPORATION (SOC) LIMITED (“the  
SABC”)**

1. We act on behalf of:

1.1 Media Monitoring Africa, a non-profit organisation which promotes ethical and fair  
journalism that supports democracy and human rights; seeks to protect the  
constitutional right to freedom of expression, and advocates for the free flow of

SABC Appointments (Draft Letter) (3)

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Bellings  
AE Bennett AP Blair DHL Booyens AR Bowley JL Brink MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster  
K Couzyn DB Cron PA Crosland JH Davies PM Daya L de Bruyn PU Dela JHB de Lange M Denenga DW de Villiers BEC Dickinson MA Diemont  
DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson KH Eiser AE Esterhuizen MJR Evans AA Felekis GA Fichardt G Fitzmaurice JB Forman  
C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson H Goolam CI Gouws PD Grealy JM Harvey MH Hathorn JS Henning KR Hillis S Hockey  
CM Holfeld PM Holloway AV Ismail ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser MD Kota JC Kraamwinkel M Kyle J Lamb E Louw  
A Manie L Marais S McCafferty MC McIntosh SJ McKenzie SI Meltzer CS Meyer AJ Mills D Milo NP Mngomezulu M Moloi LE Mostert VM Movshovich  
RA Nelson G Niven ZN Ntshona AN Nyatumba L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane MA Phillips  
D Ramjettan GI Rapson Z Rawoot K Rew NJA Robb DC Rudman WJ Rysbergen M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson  
N Singh N Singh-Nogueira P Singh J Smit MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor TK Thekiso PZ Vanda  
PP van der Merwe SE van der Meulen CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson  
AWR Westwood RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

information to the public on matters of public interest; and

- 1.2 S.O.S Support Public Broadcasting Coalition, a non-profit, voluntary association which supports the strengthening of public and community broadcasting in the public interest, primarily by monitoring and assisting with the resolution of problems facing the SABC,

(referred to collectively as (“**our clients**”).

2. Our clients are deeply concerned about the delays in appointing candidates to fill 8 vacancies on the SABC’s Board before Parliament rises on 20 March 2019.
3. As set out in detail below, a functioning Board is critical to ensuring the SABC’s independence. This is particularly significant given the upcoming national elections in May 2019. Indeed, the most critical period for a constitutional democracy to have a properly functioning and independent public broadcaster is in the build-up to, and coverage of, national elections. Our Constitutional Court has held that the public broadcaster facilitates the public’s rights to freedom of information and the media, as well as their right to vote.
4. Our clients, and the public, have a significant interest in the governance and operations of the SABC. On this score, on 12 December 2018, Webber Wentzel sent a letter, on behalf of our clients, to the President and the Minister of Finance. That letter set out various allegations of unlawful conduct by government role-players in relation to the SABC. The alleged unlawful conduct included the President’s decision to waive the notice periods of the non-executive members of the Board who resigned in December – which rendered the Board inquorate.
5. A copy of this letter is attached as “**A**”. No substantive response was ever received to this letter. We note that, as far as our clients are aware, the government has still failed to provide the SABC with any guarantee, which itself is a separate breach of the government’s constitutional duty to protect the independence of the SABC.

6. **The independence of the SABC requires an independent functioning Board**

- 6.1 You will no doubt be well aware of the litigation instituted by our clients in the matters of *SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation (SOC) Limited and Others* [2017] ZAGPJHC 289 (17 October 2017).

- 6.2 In the SOS cases, the High Court held – and it must now be regarded as finally settled – that:
  - 6.2.1 The SABC's independence is enshrined by the Broadcasting Act and the Constitution.
  - 6.2.2 The government including the Minister of Communications (the SABC's shareholder) is not entitled to interfere with this independence.
  - 6.2.3 The state must ensure that the SABC has the necessary structural and operational independence. The SABC will only have such independence if there are entrenched mechanisms to ensure that it provides accurate, neutral and pluralistic content. Our clients submit that the Board is one of these mechanisms.
  - 6.2.4 It is the Board that is responsible for managing the affairs of the SABC and the government is not entitled to interfere in this regard.
- 6.3 Various international instruments also make it plain that the Board of a public broadcaster must be independent.
- 6.4 Established principles of corporate governance make clear that a board should exercise unfettered discretion in reaching decisions and must act in the best interests of a company - not at the behest of its shareholders.

**7. The appointments are required to protect the right to vote in the imminent elections**

- 7.1 Our Constitutional Court has also emphasised that:
  - 7.1.1 The independent and pluralistic broadcaster is not only crucial for the right of freedom of expression and access to information. It is also vital to the citizen's right to vote and the right to free and fair elections in terms of section 19 of the Constitution.
  - 7.1.2 Without access to information about the conduct, opinions and relationships of political parties and the representatives, it is impossible for citizens to decide how to exercise their right to vote. If political or private interests govern the media, it cannot provide South Africans with the accurate, neutral and pluralistic information they require to make the right to vote meaningful.

- 7.2 This is especially important in South Africa because the SABC is the “*public broadcaster that millions of South Africans rely on for news and information about their country and the world at large and for as long as it remains dysfunctional, it will be unable to fulfil its statutory mandate. The public interest should thus be its overarching theme and objective.*”<sup>1</sup>
- 7.3 Against this backdrop our clients submit that ensuring that the Board does not remain rudderless is manifestly of prime and urgent importance. The mismanagement, poor governance and instability in respect of these Board positions in the SABC impacts on the quality of the broadcasting service that the SABC provides. More specifically, it impacts on the scope and quality of the information that the SABC disseminates; on the public dialogue fostered through the public media; and ultimately on the transparency, accountability and public oversight of government in our society.
- 7.4 Our clients submit that if the SABC remains dysfunctional, the election results could be open to challenge on the basis that the SABC failed to provide proper balanced coverage in the build-up to and during the elections.

## **8. The SABC Board has been inquorate since December 2018**

9. Our clients submit that by occasioning the delays in the appointment process the Committee, the National Assembly and the President have acted unlawfully and unconstitutionally, including failing in their duty under section 237 of the Constitution which provides that obligations arising from the Constitution “*must be performed diligently and without delay*”.
- 9.1 Following a series of resignations of Board members (the latest of which occurred in December 2018) there are now eight vacancies on the Board. Importantly, in terms of the Broadcasting Act the Board is inquorate. Section 13(10) of the Broadcasting Act provides:

*“(10) Nine members of the Board, which must include the chairperson or the deputy chairperson, will constitute a quorum at any meeting of the Board.”*

---

<sup>1</sup> *South African Broadcasting Corporation Soc Ltd and Others v Democratic Alliance and Others* 2016 (2) SA 522 (SCA) para 49

- 9.2 The independence of the Board is required to ensure that the SABC is independent. If the Board is inquorate it cannot take any decisions or pass any resolutions. In law, the SABC effectively has no Board at all.
- 9.3 The Committee had already been struggling to fill the initial four vacancies for months in 2018. On 30 November 2018, the Committee published a notice inviting nominations to fill the vacancies. The deadline for submitting applications expired on 21 December 2018.
- 9.4 But despite various commitments by state entities that the process would be completed without delay – the process is still in its infancy. For instance, in December, the Chairperson of the Committee, Professor Mkize, was quoted in the media stating that the Committee would meet in mid-January 2019 to determine the quality and number of applications and hoped that the National Assembly's final approval of the recommended candidates would be concluded in February 2019.
- 9.5 However, by 19 February the Committee confirmed that it had still not even received the candidates' CVs and applications – one of the first stages in the appointment process.
- 9.6 This is extremely concerning to our clients since it is not clear why the process has taken so long and various other steps need to be completed before 20 March 2019 when Parliament rises:
- 9.6.1 Candidates must be shortlisted;
- 9.6.2 Shortlisted candidates must be interviewed;
- 9.6.3 Recommendations will be provided to the National Assembly;
- 9.6.4 The President must appoint the candidates recommended by the National Assembly. Our clients emphasise that section 13 of the Broadcasting Act provides that: "*The twelve non-executive members of the Board must be appointed by the President on the advice of the National Assembly.*" The legal position is clear that where the President is required to act "*on the advice of*" an entity, he has no discretion but to appoint the recommended candidates.

**The appointment process**

10. On 19 February 2019, the Committee held a meeting to discuss the appointment process. It has been reported that there are 233 applications for the eight vacancies and that the Committee will finalise its shortlist next week and interview the shortlisted candidates a week later. Our clients note that this leaves very little time for the National Assembly to submit the candidates to the President for approval.
11. At the Committee's meeting on 19 February, various members emphasised that it is absolutely possible and practical for the appointments to be made before 20 March 2019. Our clients agree that it is possible and practical. Moreover, given the constitutional duty on the National Assembly and the President, and the national importance of having the positions filled, there appears to be no reason why the process could not be finalised on an urgent basis.
12. Our clients request a copy of the envisaged timetable that has been agreed on for completing the appointment process before 19 March 2019. The timetable should include the dates by which:
  - 12.1 The candidates will be shortlisted;
  - 12.2 The shortlisted candidates will be interviewed;
  - 12.3 The names will be provided to the National Assembly;
  - 12.4 The candidates approved by the National Assembly will be appointed by the President.
13. Please provide this timetable to us by no later than 17h00 on Friday, **22 February 2019**.
14. All our clients' rights, including the right to take urgent legal action if necessary, are strictly reserved.

Yours faithfully

**Partner**

Direct tel: +27 11 530 5232

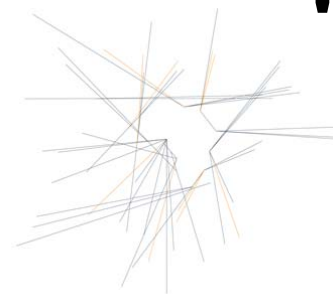
Direct fax: +27115306232

Email: [dario.milo@webberwentzel.com](mailto:dario.milo@webberwentzel.com)

*Letter sent electronically without signature.*

# WEBBER WENTZEL

in alliance with > Linklaters



## URGENT

### To:

**His Excellency, President MC Ramaphosa  
President of the Republic of South Africa**

Union Buildings  
Government Avenue  
Pretoria

**By email:** presidentrsa@presidency.gov.za  
president@presidency.gov.za  
ntoeng@presidency.gov.za  
malebo@presidency.gov.za

90 Rivonia Road, Sandton  
Johannesburg, 2196

PO Box 61771, Marshalltown  
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 11 530 5000  
F +27 11 530 5111

www.webberwentzel.com

### And To:

**Mr T Mboweni, MP  
Minister of Finance**

40 Church Square  
Old Reserve Bank Building  
2nd Floor, Pretoria  
0002

**By email:** minreg@treasury.gov.za

(Page 1 of 5 including this page)

Your reference

Our reference

Date

D Milo / N Padayachee  
3030652

12 December 2018

**CONFIDENTIALITY NOTE:** This letter contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this letter or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax, e-mail or telephone at the numbers listed above and we will reimburse the costs of doing so.

Dear Mr President and Mr Mboweni

## IN RE: THE SOUTH AFRICAN BROADCASTING CORPORATION (SOC) LIMITED ("SABC")

1. We act on behalf of:

- 1.1 Media Monitoring Africa, a non-profit organisation which promotes ethical and fair journalism that supports democracy and human rights; seeks to protect the constitutional right to freedom of expression, and advocates for the free flow of information to the public on matters of public interest; and
- 1.2 S.O.S Support Public Broadcasting Coalition, a non-profit, voluntary association which supports the strengthening of public and community broadcasting in the public

13281003\_3

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp OA Ampofo-Anti RL Appelbaum DC Bayman KL Beillings AE Bennett AP Blair DHL Booysen AR Bowley JL Brink MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland JH Davies PM Daya L de Bruyn PU Dela JHB de Lange M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson KH Eiser AE Esterhuizen MJR Evans AA Felekis GA Fichardt G Fitzmaurice JB Forman C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson SJ Gilmour H Goolam CI Gouws PD Greal JM Harvey MH Hathorn JS Henning KR Hillis XNC Hlatshwayo S Hockey CM Holfeld PM Holloway AV Ismail ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser JC Kraamwinkel M Kyle J Lamb A Manie L Marais S McCafferty MC McIntosh SJ McKenzie SI Meltzer CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu M Moloi LE Mostert VM Movshovich RA Nelson ZN Ntshona AN Nyatumba L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane TC Phala MA Phillips D Ramjattan GI Rapson Z Rawoot K Rew NJA Robb DC Rudman WJ Rysbergen M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh J Smit MP Spalding PS Stein MW Strauli LJ Swaine Z Swanepoel A Thakor TK Thekiso A Toefy PZ Vanda PP van der Merwe SE van der Meulen CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd



interest, primarily by monitoring and assisting with the resolution of problems facing the SABC,

(referred to collectively as "**our clients**").

2. Our clients, and indeed the public, have an acute interest in the governance and operations of the SABC. Our clients wish to address you on the recent acceptance of the resignation of four directors of the SABC, the application by the SABC for financial assistance and the apparent interventions in the Turnaround Strategy of the Board of Directors of the SABC ("**the Board**") by Minister of Communications, Ms Ndabeni-Abrahams.

3. **Background to the financial difficulties of the SABC**

- 3.1 As you are well aware, the SABC is operating at a large financial deficit as a result of the historical mismanagement of the company, which has fortunately recovered somewhat due to the appointment of a new Board. The SABC's financial position is succinctly summarised in the SABC's Annual Report 2018, in the foreword by the chairperson of the Board, which states as follows:

*Total revenue for the full financial year was **R6.6 billion against a budget of R7.3 billion resulting in an underperformance of R633 million (9%)**. While it is positive that the SABC managed to reduce the Corporation's operating loss from R1.1 billion in the prior year to R622 million in the year under review, **the Board has approved a comprehensive turnaround strategy to be led by the new team of executive directors.**<sup>1</sup> (our emphasis)*

- 3.2 We note that it is only as a result of the austerity measures put in place by the current board of directors that the SABC has been able to reduce its operational deficit by some R300 million and make meaningful progress in healing its finances.
- 3.3 Notwithstanding the progress made by the Board, it is evident from the SABC's Annual Report 2018 that the SABC still requires significant funding to bridge its operational deficit.

4. **Application by the SABC Board for a government guarantee and implementation of Turnaround Strategy**

- 4.1 The Board has applied for a R3 billion government guarantee to the National Treasury in a bid to secure the operations of the SABC. However, Treasury's decision in respect of this application has been pending for some 14 months, with no explanation of the delay and no definitive action taken to progress the application has been forthcoming by Treasury or the Department of Communications.
- 4.2 It has been reported that should the *status quo* at the SABC persist, the company will be out of funds by February 2019. In light of Government's failure to act decisively with regard to the SABC's application for a government guarantee, and in order ensure the continuity of the SABC, after engagement with the relevant stakeholders the Board resolved to implement the Turnaround Strategy.

---

<sup>1</sup> At page 14 of the SABC's Annual Report 2018.

- 4.3 As a first step in the Turnaround Strategy, the Board has approved and issued a notice in terms of section 189 of the Labour Relations Act, 66 of 1995, which will see the possible retrenchment of some 980 permanent staff members of the SABC and 1200 freelance journalists with a view to reducing costs by approximately R440 million per annum.

**5. The unlawful conduct of the government role-players**

- 5.1 The conduct of the various government role-players in response to these events has been unlawful in three separate respects.

**5.2 First, the government has without any proper basis refused to provide the government guarantee requested.**

- 5.2.1 This is a matter of enormous concern.

- 5.2.2 We fully appreciate that government faces multiple demands on its resources, but the existence of a properly functioning SABC is essential for our democracy and is indeed required by our Constitution.

- 5.2.3 You will no doubt be well aware of the litigation instituted by our clients in the matters of *SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation (SOC) Limited and Others* [2017] ZAGPJHC 289 (17 October 2017).

- 5.2.4 In those matters, the High Court emphasised the critical role played by the SABC and the fact that it is constitutionally required to be independent.

- 5.2.5 That judgment must be read together with the numerous other judgments of the Constitutional Court which make plain that government is constitutionally obligated to provide the necessary funding to enable independent public institutions to properly fulfil their functions

- 5.2.6 By failing to provide the necessary guarantee to the SABC, government is acting unlawfully and unconstitutionally.

- 5.2.7 We hereby request that you provide reasons by Tuesday 18 December 2018 for your reasons for your failure and/or refusal to provide the necessary guarantee.

**5.3 Second, the Minister has unlawfully interfered in the running of the SABC.**

- 5.3.1 In the wake of the necessary implementation of the Turnaround Strategy, Ms Ndabeni-Abrahams addressed a letter to the Chairperson of the Board, Mr Makhathini, on 30 November 2018 ("**the letter**"), a copy of which is attached hereto marked "**A**".

- 5.3.2 In the letter, Ms Ndabeni-Abrahams, among other things, strongly opposed the retrenchments contemplated in the turnaround plan and insisted that the Board should consult with and seek the approval of its shareholder, the Department of Communications before making decisions made in relation to the running of the SABC. The Minister went so far as to suggest in the letter that the Board was acting improperly by going against her wishes.

- 5.3.3 Our clients are of the view that this conduct by Ms Ndabeni-Abrahams is unlawful, unconstitutional and highly improper. Ms Ndabeni-Abrahams' apparent directive to the Board goes directly against the established principles of corporate governance that a board should exercise unfettered discretion in reaching decisions and must act in the best interests of a company - not at the behest of its shareholders.
- 5.3.4 In the SOS cases referred to above, the High Court held – and it must now be regarded as finally settled – that:
- 5.3.4.1 The SABC's independence is enshrined by the Broadcasting Act and the Constitution and that the Minister, as shareholder, is not entitled to interfere with this independence; and
- 5.3.4.2 It is the Board that is responsible for managing the affairs of the SABC and the Minister is not entitled to interfere in this regard.
- 5.3.5 Our clients are concerned that it is in this context of undue and indeed, unchecked, political pressure that four directors of the SABC Board have now resigned, reportedly due to issues with the proposed retrenchments. Our clients submit that the timing of the resignations following Ms Ndabeni-Abraham's letter is not coincidental.
- 5.4 **Third, the President apparently waived the three months' notice period required of the resigning directors.**
- 5.4.1 The President did so even though it was plain that the immediate removal of the four directors effectively leaves the Board inquorate and places the SABC in real jeopardy of collapse.
- 5.4.2 Our clients are concerned that this appears to be a calculated and coordinated effort to ensure that the current Board is rendered inoperative.
- 5.4.3 We hereby request that you provide reasons by Tuesday, 18 December 2018 for this decision.

## 6. **Way forward**

- 6.1 Our clients respectfully submit that the conduct of the government role-players as set out above is unlawful, irrational and unconstitutional.
- 6.2 Our clients urgently request that they be provided with the sets of reasons referred to in paragraph 5.2.7 and 5.4.3 **by no later than 16h00 on Tuesday, 18 December 2018.**
- 6.3 All of our clients' rights, including the right to take further legal action if necessary, are strictly reserved.

Yours faithfully

**WEBBER WENTZEL**

Dario Milo / Nadia Padayachee

Partner / Associate

Direct tel: +27 11 530 5232

Direct fax: +27115306232

Email: dario.milo@webberwentzel.com

*Sent electronically without signature.*

**cc: Mr B Makhathini**  
**Chairperson of the Board, SABC**  
MakhathiniBE@sabc.co.za

**cc: Ms TS Ndabeni-Abrahams, MP**  
**Minister of Communications**  
SNdabeni-Abrahams@dtps.gov.za  
pmarutla@dtps.gov.za  
Tebatsoc@doc.gov.za  
chrispin@doc.gov.za  
Mmakoloane@doc.gov.za  
Nobusi@doc.gov.za

**cc: Mr C Maxegwana, MP**  
**Chairperson of the Portfolio Committee on Communications**  
hmaxegwana@parliament.gov.za  
tngoma@parliament.gov.za  
wmguga@parliament.gov.za

**cc: Mr N Godi, MP**  
**Chairperson of the Standing Committee on Public Accounts**  
ngodi@parliament.gov.za  
bkali@parliament.gov.za  
nnkabinde@parliament.gov.za

**cc: The Honourable Ms B Mbete, MP**  
**Speaker of the National Assembly**  
bmbete@parliament.gov.za



**MINISTRY: COMMUNICATIONS  
REPUBLIC OF SOUTH AFRICA**

Private Bag X860, Pretoria, 0001, Tel: +27 12 473 0164 Fax: +27 12 473 0585  
Tshedimose House, 1035 Frances Baard Street, Pretoria, 1000

[www.gov.za](http://www.gov.za)

REFERENCE: MINSUB/SABC2018/02

ENQUIRIES: Dr Mashilo Boloka

TEL: 012 473 0412

Mr B Makhathini  
The Board Chairperson  
SABC  
Radio Park  
Henley Road  
AUCKLAND PARK  
2094

Dear Mr Makhathini

**SUBJECT: SOUTH AFRICAN BROADCASTING CORPORATION'S (SABC)  
REQUEST FOR MINISTER'S INTERVENTION WITH REGARD TO GOVERNMENT  
GUARANTEE APPLICATION**

1. The meeting between the Ministry of Communications and the Board of SABC on the 29 November 2018 has reference.
2. We have taken note that the SABC applied for R3 billion government guarantee during the Interim Board period and the Minister responsible was Minister Ayanda Dlodlo. The application was submitted to National Treasury during 2017 financial year. The second revised submission was done during the term of office of Minister Mmamoloko Kubayi - Ngubane by the current board. The Department received a response from Minister of Finance Nhlahla Nene around March 2018 wherein he indicated that the submission is receiving attention. The former Minister Nomvula Mokonyane requested that the technical teams for both departments, DoC and NT and SABC must, through



a Task-Team, work together to ensure that the application meet Treasury requirements before the meeting of both ministers.

3. Based on former Minister's concerns on the financial crisis of the SABC, the ADG requested that the GTAC be requested to assist in the development and monitoring of the Turnaround Strategy. GTAC agreed and did a project charter outlining what needed to be done to ensure a financially viable and sustainable SABC. The Task Team between the Department, NT and SABC was established to ensure that the Turnaround Strategy met the requirements for all stakeholders.
4. While discussing the GTAC project, SABC management submitted to the Department that they had developed Strategic Roadmap 2023 for SABC which had been approved by the Board. Despite the concerns raised by Minister Mokonyane with the Board on the 4<sup>th</sup> of September in Cape Town, the Board went ahead to start with section 189 process, whose end result was to retrench employees.
5. We have also taken note that the SABC submitted a letter to Minister Mokonyane requesting her concurrence for the application of the R1.2 billion loan facility. The Department processed the request and the letter of concurrence was submitted to Minister of Finance to ensure compliance with PFMA, which requires that public entities must receive approval from National Treasury before any borrowings could be done. The Minister of Finance responded that they had consulted their legal advisors and had given an opinion that SABC did not require Minister's approval for this kind of borrowing. It is safe to say SABC was to utilise its debtor's facility as a security. The Department gave feedback to the SABC.
6. As observed in the meeting on 29 November 2018, it is clear that this new development puts on hold the government guarantee application as SABC thought financial institutions would come to their rescue. That is why at the meeting it was clear that the Government Guarantee application was never updated after the development of the Turnaround Strategy by the new Executive management and the approval of the borrowing limit. It is clear now that the discussion with financial institutions is not going according to the envisaged plan, and SABC liquidity challenges are increasing day by day, hence pressure on government bailout and looming section 189 process.



7. The SABC is engaged on section 189 of the LRA, and indicated that they will be retrenching 981 permanent employees and 1200 freelancers. We are also aware that the SABC presented to the Portfolio Committee on Communications and SCOPA on this section 189 process and all these committees have not approved the SABC approach on this matter and have requested the SABC to explore all the alternatives before ultimately resorting to retrenchments. The former Minister was also vocal on this matter. SCOPA went further to urge the SABC to recover R5 billion in irregular, fruitless and wasteful expenditure as well as applying cost reduction methods before they could commence with retrenchments. They were also not happy about the salary packages that are being offered to the top executives of the SABC amid the financial position. SCOPA has requested SABC to submit monthly reports on how are they going to clear the AGSA findings in preparation for 2018/19 financial year AFS.
8. The SABC presented to PCC again on Tuesday the 27 November 2018 about their continued intentions of retrenchments but the committee again requested them to find other alternatives and to come back to the committee with all the supporting documents. Until these documents are submitted, the Committee made it clear that no retrenchments should take place.
9. It was against this background that a meeting with the employees, the unions, management and the board on this matter was convened yesterday. As a shareholder, and further taking into account the discussions at Parliament, both at SCOPA and PCC, we pleaded with the Board to suspend the section 189 notice so as to allow us an opportunity to familiarize with the Turnaround Strategy, the Bailout application, and furthermore in consideration of the impending meeting between myself and Minister of Finance to discuss the SABC's financial position. The Board flatly declined this request, resolving instead not to *"agree to the directive (by the Minister). The Board proposes that the status quo on section 189 continue while the Minister approaches the Presidency and National Treasury for immediate cash injection. The Board will review the pace and quantum of the impact of the section 189 should funding be found"*.
10. The Board further made it clear at the meeting that irrespective of the success of Government guarantee or bailout, they will still proceed with retrenchments. As the shareholder representative, we were left with no option but to desist from all engagements with the SABC Board, including National Treasury, and Turnaround

Task-team as we realized that the Board was no longer acting in the interests of the Company, the shareholder, and Parliament as the representative of South African public to which the SABC Board is accountable to.

We will report this impasse to the President, Parliament and all relevant stakeholders on the outcome of this meeting, because the SABC is a public institution with clear lines of accountability.

Yours sincerely,



**MS STELLA NDABENI-ABRAHAMS, MP**  
**MINISTER OF COMMUNICATIONS**

**DATE:** 30/11/2018

**Cc: The President**  
**Chairperson of the Portfolio Committee on Communications**  
**Chairperson of Standing Committee on Public Accounts**  
**Minister of Finance**